IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

GEORGE HALEY,

                              Plaintiff,

         -vs-

CMS SECURITY, LLC, et al

                      Defendants.

: CASE NO. 1:12 CV 00712

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: MEMORANDUM AND ORDER
: DENYING THE DEFENDANT'S
: MOTION TO DISMISS

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UNITED STATES DISTRICT JUDGE LESLEY WELLS

      The plaintiff George Haley brought this suit against CMS Security, LLC, and

Computerized Mudlogging Service, LLC ("Computerized Mudlogging"), seeking relief

under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, and under state law.

Computerized Mudlogging presently seeks dismissal of the claims against it pursuant to

Federal Rule 12(b)(6). The defendant maintains that the plaintiff has not stated a claim,

because it has no employment relationship with him.

      The Court must reject Computerized Mudlogging's argument, because it raises a

an issue of fact that cannot be resolved on a motion to dismiss. A motion to dismiss for

failure to state a claim challenges the sufficiency of the complaint. The complaint is

viewed in the light most favorable to the plaintiff, the allegations in the complaint are

accepted as true, and all reasonable inferences are drawn in plaintiff's favor. Bassett v.

Nat'l Collegiate Athletic Ass'n, 528 F.3d 426, 430 (6th Cir.2008). However, "a legal

conclusion couched as a factual allegation" need not be accepted as true. Bell Atlantic

Corp. v. Twombly, 550 U.S. 544, 555 (2007).

Therefore, for the purposes of the defendant's motion, the Court accepts as true

the plaintiff's factual allegation that he "was employed by Defendants from on or about

September 23, 2010 until on or about August 18, 2011." (See Complaint ¶13). The

defendant's denial of this allegation does not form a a proper basis for dismissal, in light

of the above-stated standard.

Computerized Mudlogging's motion is denied. Its request for additional time to

answer is granted. Defendant's answer is due within 14 days from this order's issuance.

IT IS SO ORDERED.

UNITED STATES DISTRICT JUDGE

Date: 28 Jan 2013

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